

रजिस्टर्ड नं० HP/13/SML/2004.



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, सोमवार, 18 अक्टूबर, 2004/26 आश्विन, 1926

हिमाचल प्रदेश सरकार

निर्वाचन विभाग

अधिसूचना

शिमला-171 009, 13 अक्टूबर, 2004

संख्या 3-16/2002-ई०एल०एन०.—भारत निर्वाचन आयोग की अधिसूचना संख्या 82/हि० प्र०/(4-2003)/2004, दिनांक 24 सितम्बर, 2004 तदनुसार, 2 आश्विन, 1926 (शक्), जिसमें 64-गोपालपुर विधान सभा निर्वाचन क्षेत्र से विधान सभा निर्वाचन—2003 को प्रशस्त करने सम्बन्धी निर्वाचन अर्जी संख्या 4

2237-राजपत्र/2004-18-10-2004—1,482

(2161)

मूल्य : 1 रुपया ।

शीर्षक "कर्नल ईन्द्र सिंह बनाम रंगीला राम राव और अन्य" में हिमाचल प्रदेश उच्च न्यायालय स्थित शिमला, के तारीख 17 अगस्त, 2004 का निर्णय निहित है, को जनसाधारण की सूचना हेतु प्रकाशित किया जाता है।

आदेश से,

मनीषा नन्दा,
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश।

भारत निर्वाचन आयोग,

24 सितम्बर, 2004

तारीख—

2 आश्विन, 1926 (शक)

अधिसूचना

सं० 82/हि० प्र०/(4-2003)/2004. —लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग 2003 की निर्वाचन अर्जी संख्या 4 में शिमला स्थित हिमाचल प्रदेश उच्च न्यायालय के तारीख 17 अगस्त, 2004 के निर्णय को एतद्वारा प्रकाशित करता है।

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashoka Road,
New Delhi-110 001.

Dated 24th September, 2004
2 Asvina, 1926 (SAKA)

NOTIFICATION

No. 82/HP-LA (4-03)/2004.—In pursuance of Section 106 of the Representation of People Act, 1951 (43 of 1951), the Election Commission hereby publishes judgement dated 17th August, 2004 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 4 of 2003.

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Election Petition No. 4 of 2003

Judgement reserved on 19th July, 2003

Date of Decision 17th August, 2004

Col. Inder Singh

.. Petitioner.

Versus

Rangila Ram Rao and others

.. Respondents.

Coram

The Hon'ble Mr. Justice M. R. Verma, Judge.

Whether approved for reporting yes

For the Petitioner	.. Mr. Sandeep Kaushik, Advocate
For Respondent No. 1	.. Mr. Dharamvir Sharma, Advocate
For Other Respondents	.. None

M. R. VERMA, JUDGE :

This petition under Sections 80, 81 read with Sections 100, 101 and 123 (7) of the Representation of People Act, 1951 (hereafter referred to as 'the Act') has been filed by the petitioner praying for setting aside the elections of respondent No. 1 to the Himachal Pradesh Vidhan Sabha from 64-Gopalpur Vidhan Sabha Constituency and for declaring the petitioner duly elected to the Himachal Pradesh Vidhan Sabha from the said Constituency.

2. The case of the petitioner as made out in the petition is that the petitioner and the respondents contested the election to the Himachal Pradesh Vidhan Sabha from 64-Gopalpur Vidhan Sabha Constituency, held on 22-2-2003. The petitioner contested the election as candidate of Bhartiya Janta Party, respondent No. 1 as a candidate of Indian National Congress, respondent No. 2 as a candidate of Himachal Vikas Congress Party, respondent No. 3 as a candidate of Himachal Lok Morcha and the rest of the respondents contested the election as Independent Candidates. On counting of the votes, respondent No. 1 was declared elected by a margin of 2519 votes by securing total 20959 votes. The petitioner secured 18460 votes and the other respondents secured less than 6000 votes.

3. The election of respondent No. 1 has been challenged by the petitioner on the grounds set out in detail *vide* paras 5 to 11 of the petition, the sum and substance whereof is as follows :

(i) That one Uday Bhanu, a Government servant working as Multipurpose Health Worker and a resident within Gopalpur Constituency, who was earlier seen in the company of respondent No. 1 on 25-2-2003 carried 95 pouches of Indian Liquor in a car without any permit and at the instance of respondent No. 1 to be distributed amongst the electorate in the vicinity of Nawahi and Bastala 1 and 2 polling booths of the said Constituency. In this connection FIR No. 53 of 2003 was registered in Police Station Sarkaghat on the basis of an entry made in the Daily Diary on 25-2-2003.

(ii) That respondent No. 1 for furtherance of his prospects in the election had sought assistance from Gazetted Officers of the Government, namely (1) Kuldeep Rao,

X-En., HPPWD, (2) Dr. Nanak Chand Rao, Additional Director Health (Dental), (3) Smt. Anita Rao, Additional Director (Education), (4) Surjit Rao, Lecturer (School Cadre), (5) Joginder Singh Rao, Lecturer (School Cadre) (President Lecturers Association, Himachal Pradesh) and out of these persons Kuldeep Rao and Nanak Chand Rao visited and canvassed for respondent No. 1 in the areas of Thona, Tikkar, Pingla, Khahn Polling Booths and influenced the voters, and Anita Rao, Surjeet Rao and Joginder Singh Rao worked in the vicinity of their house in the areas around Gopalpur consisting of Gopalpur, Badal and Mohin Polling Booths and influenced and persuaded the voters to vote for respondent No. 1.

- (iii) That respondent No. 1 took assistance of other government employees for furtherance of his prospects in the election and a large number of government employees canvassed and worked for him during electioneering regarding which the complaints were made to the Election Authorities. From amongst the government servants who worked for respondent No. 1 Lal Singh an employee of the HPSEB influenced the employee voters of HPSEB in Baldwara area whereas Ved Parkash Lecturer (History) actively worked for respondent No. 1 in the areas in and around the polling booths of Samila, Alsogi, Nawahi, Bathera and Chowki.
- (iv) That respondent No. 1 violated the Rules and Law and illegally influenced the voters to vote for him by using red light on his private vehicle during electioneering in almost the entire Constituency.
- (v) That respondent No. 1 violated the rules and law by electioneering after the close of election campaign.

4. On the basis of the aforesaid grounds it is claimed that respondent No. 1 influenced the voters by exerting under influence thereby inducing the electorate to vote for him and such acts are violative of the Rules and Law which adversely affected the prospects of the petitioner in the election and vitiated the entire election process.

5. Respondent No. 1 contested the petition. In the Written Statement he raised the preliminary objections that the averments contained on paras 5 to 10 of the Election Petition do not constitute corrupt practices within the meaning of Section 123 (7) of the Act or any other provision of the Act, therefore, are liable to be struck out under Order 6 Rule 16 of the Code of Civil Procedure (hereafter referred to as 'the Code'), that the petition does not disclose any cause of action, therefore, is liable to be dismissed under Order 7, Rule 11 of the Code, that the petition is frivolous and there is non-compliance of the provisions of Section 83 of the Act does not disclose the material facts and particulars constituting alleged corrupt practices, that there is no allegation that the alleged canvassing by the government servants, if any, was at all done with the consent of the respondent, that the allegations contained in the petition are vague and superfluous and the source of information, in the affidavit has not been disclosed nor there is affidavit in Form-25 under Rule 94-A of the Conduct of Election Rules, therefore, the petition is liable to be dismissed in limine.

6. On merits while admitting the date of election, the result in favour of respondent No. 1 and the votes secured by the candidates the other averments in the petition alleging corrupt practices of providing liquor, carrying of liquor by Bhanu Partap at the instance of respondent No. 1 taking help of Government servants for furtherance of prospects to win the election and use of red light in his private vehicle to influence the voters by respondent No. 1 have been denied. It has been claimed that respondent No. 1 did not adopt any illegal practice. It is also claimed that he is highly experienced and popular leader of the masses and has always come victorious in the elections and the allegations made in the petition against him are whimsical, imaginary and incorrect.

7. The petitioner filed replication where in the grounds of defence as taken in the Written Statement have been denied and the averments as made in the petition have been reaffirmed.

8. On the pleadings and with the consent of the parties, following issues were framed :

1. Whether Paragraphs 5 to 10 of the Election Petition are liable to be struck off under Order VI Rule 16 C P C as these paras do not constitute corrupt practices as envisaged under Section 123 (7) of the Act ? -- OPR.
2. Whether the petition is liable to be dismissed under Order VII Rule 11 CPC for want of disclosing cause of action as alleged ? .. OPR.
3. Whether petition is frivolous and lacks in material facts, as alleged ? .. OPR.
4. Whether affidavit filed with the petition is not in prescribed form as alleged. If so, its effect ? .. OPR.
5. Whether respondent No. 1 has exerted undue influence and sought assistance for furtherance of his prospects from persons in service of Government of Himachal Pradesh ? .. OPP.
6. Whether respondent No. 1 indulged in unlawful/corrupt practices, as alleged ? .. OPP.
7. Relief.

9. Parties led evidence Arguments were heard.

10. My findings are as follows :

Issues No. 1 & 3 :

11. Since both these issues are interconnected and based on objections intended to get the material paras No. 5 to 10 of the petition struck out, therefore, are taken up together for discussion and decision.

12. It was contended by the learned counsel for the petitioner that the pleadings *vide* paras No. 5 to 10 of the petition do not contain precise statement of the material facts and material particulars and contain frivolous averments, therefore, paras No. 5 to 10 of the petition are liable to be struck out and as a consequence no issue will remain alive for determination, therefore, the petition itself is liable to be dismissed.

13. To appreciate the contentions of the learned counsel for respondent No. 1 it may be pointed out here that the provisions of O VI R 16 of the Code are indisputably applicable to the pleadings in the proceedings under the Act. Said provisions, however, will be applicable to and attracted in a case where the pleadings are unnecessary, scandalous, frivolous and vexatious or tend to prejudice, embarrass or delay the fair trial or which is an abuse of the process of the Court. Therefore, if the pleadings suffer from any one or more of the aforesaid vices those will be liable to be struck out.

14. Further the pleadings in an Election Petition must necessarily comply with the requirements of Section 83 of the Act, Section 83 (i) (a) provides that every Election Petition shall contain a concise statement of the material facts. It means that all the facts which will constitute a complete cause of action must be concisely averred in the petition. Section 83 (1) (a) further provides that an Election Petition must contain "full particulars" of the corrupt practice alleged to have been committed by the returned candidate. The non-compliance of the provisions of Section 83 (1) (a) will result in rejection of the petition under Order 7 Rule 11 of the Code, whereas non-compliance of Section 83 (1) (b) may depending upon the circumstances result in striking out the pleadings.

15. It is also important to note that the rival contentions of the contesting parties have been heard in this case after full trial, therefore, it will have to be kept in mind that while recording findings on these issues, this Court is not influenced by the evidence led by the parties on merits and the deciding factor must be the pleadings alone.

16. Paras No. 5 to 11 of the petition contain the averments regarding the alleged corrupt practices as summarised in para 3 *supra*. Para 5 contains the gist of the alleged corrupt practices and so are the averments in para 11. The contents of paras No. 6 to 10 state the acts constituting the alleged corrupt practices and contains the particulars of each of the alleged practices including the names of the places where such practices were adopted, names of the persons who assisted the petitioner therein and names of the persons who witnessed the indulgence in such practices. Thus, paras No. 6 to 10 of the petition disclose the material particulars of the alleged corrupt practices and do not contain anything which may be termed as unnecessary, scandalous, frivolous, vexatious or which tends to prejudice, embarrass or delay the fair trial of the petition or may amount to an abuse of the process of the Court.

17. In view of the above discussion and conclusion, Issues No. 1 and 3 are decided against respondent No. 1.

Issue No. 2 :

18. It was contended by the learned counsel for respondent No. 1 that on a bare perusal of paras 5 to 10 of the petition, it is clear that these paras do not contain such averments/allegations which may amount to a corrupt practice and, thus, the petition does not disclose a cause of action. It was further contended that if the election of the returned candidate is challenged on the ground of any corrupt practice, it has to be specifically averred that the acts constituting such practice were committed by the specified persons with the consent of the returned candidate because there is no presumption in the law that indulgence by any person in the acts which amount to corrupt practice for favourable to the returned candidate was with the consent, therefore, such consent has not only to be proved but to be pleaded to disclose a cause of action. In the aforesaid paras of the petition submitted the learned counsel for respondent No. 1, there is no averment at all that the alleged acts committed by other persons, which according to the petitioner, amount to corrupt practice(s), were committed by them with the consent of respondent No. 1. Therefore, the learned counsel urged that the petition does not disclose any cause of action against respondent No. 1 and is liable to be dismissed under Order 7 Rule 11 of the Code.

19. On the other hand, the learned counsel for the petitioner contended that it has been specifically averred in each para containing allegation about the commission of corrupt practices that the acts constituting the corrupt practices were committed pursuant to the assistance sought by respondent No. 1 from the concerned persons specifically named in the petition. It cannot, therefore, be said that for want of using the expression 'consent' the allegations are rendered defective because consent of respondent No. 1 is implicit in his asking the assistance of such persons in furtherance of his prospects. Thus, according to the learned counsel for the petitioner, the averments made in the petition, including those made in paras 5 to 11 of the petition, clearly disclose a cause of action in favour of the petitioner and against respondent No. 1.

20. The cause of action is a bundle of essential facts which it is necessary for the plaintiff/petitioner to prove before he could succeed in the suit. Thus every fact which if traversed, it would be necessary for the plaintiff/petitioner to prove in order to support his right to the judgement of the Court.

21. In the case in hand, the facts constituting the cause of action in favour of the petitioner are stated in paras No. 6 to 10 of the petition. The sum and substance of the facts stated therein

has already been set out in para-3 *ibid*. It has not been specifically averred in any of the aforesaid paras that the imputed acts by the persons other than the petitioner were committed with the consent of respondent No. 1. However, it is averred in para 6 that the allegedly seized liquor was being carried by Udey Bhanu at the instance of respondent No. 1 and was being carried for being distributed amongst the electorate in the vicinity of Nawahi and Batala 1 and 2 Polling Booths. While making the other allegations of corrupt practices *vide* paras No. 7 to 9 that the concerned persons who allegedly worked in furtherance of the prospects of respondent No. 1 in the election did so on their assistance having been sought by respondent No. 1 to do so. Giving of consent is implicit in the act of a person seeking assistance of another person to do some act for him in furtherance of his objective. Therefore, merely because expression consent has not been used in the petition but sought assistance will not render the petition liable for rejection on the ground of non-disclosure of cause of action because when a person will do something on the request for assistance made by another person, he will be doing such act with the consent of the person on whose asking he committed the act or omission, as the case may be.

22. It is clear on a bare reading of the aforesaid paragraphs that specific act(s) constituting corrupt practices has been averred therein and the names of the persons who on the asking of respondent No. 1 to assist him indulged in such practice have been given alongwith date and place of commission thereof. The names of the persons who witnessed the commission of such practices here also been given in the petition. Thus, all material facts and particulars disclosing the case of action to institute the petition by the petitioner are contained in the petition. Therefore, the petition is not liable for rejection under Order 7 Rule 11 of the Code. As a result, this issue is decided against respondent No. 1.

Issue No. 4 :

23. Pursuant to the statement at the bar by the learned counsel for respondent No. 1, as noted *vide* order dated 15-7-2004, at the time of final arguments, this issue was not pressed for respondent No. 1. It is, therefore, held against respondent No. 1.

Issues No. 5 and 6 :

24. Since both these issues relate to alleged corrupt practices, therefore, are taken up together for decision.

25. It may be pointed out here that by now it is well settled that the charge of corrupt practice is required to be proved, generally speaking, like a Criminal Charge and the same standard of proof as is required in a criminal case is to be applied in testing the evidence of corrupt practice. Therefore, an election cannot be set aside unless the alleged corrupt practice is proved beyond reasonable doubt by cogent, unimpeachable and clinching trustworthy evidence and the burden of proof is on the party which challenges the election on the ground of corrupt practices.

26. In *Gajanan Krishnaji Bapat and another vs. Dattaji Raghobaji Meghe and other* (AIR 1995 SC 2284) the Hon'ble Supreme Court held as under:—

It is equally well settled by this Court and necessary to bear in mind that a charge of corrupt practice is in the nature of a quasi criminal charge, as its consequence is not only to render the election of the returned candidate void but in some cases even to impose upon him a disqualification for contesting even the next election. The evidence led in support of the corrupt practice must therefore, not only be cogent and definite but if the election petitioner has to succeed he must establish definitely and to the satisfaction of the court the charge of corrupt practice which he levels against the returned candidate. The onus lies heavily on the election petitioner to establish

the charge of corrupt practice and in case of doubt the benefit goes to the returned candidate. In case of an election petition based on allegations of commission of corrupt practice the standard of proof is generally speaking that of criminal trials, which requires strict proof of the charge beyond a reasonable doubt and the burden of proof is on the petitioner and that burden does not shift (See with advantage: *Nihal Singh vs. Rao Birendra Singh* (1970) 3 SCC 239; *Om Prabha Jain vs. Charan Das*, 1975 (supp.) SCR 107, (AIR 1975 SC 1417); *Dault Ram Chauhan vs. Anand Sharma* (1984 SC 621) and *Quamarul Islam vs. S. K. Kanta*, 1984 Supp (3) SCC 5: (1994 AIR SCW 1598).

By this proposition, however we should not be understood to mean or imply that the returned candidate is absolved from his liability to bring forth evidence on the record to rebut the case of the petitioner and to particularly prove such facts which are within his special knowledge (S. 106 Evidence Act). Though the nature of allegations in cases alleging corrupt practices are quasi criminal and the burden is heavy on him to assails an election but unlike in a criminal trial, where an accused has the liberty to keep silent, during the trial of an election petition the returned candidate has to place before the Court his version and to satisfy the Court that he had not committed the corrupt practice as alleged in the petition and wherever necessary by adducing evidence besides giving his sworn testimony denying the allegations. However, this stage reaches if and when the election petitioner leads cogent and reliable evidence to prove the charges levelled against the returned candidate as, only then, can it be said that the former has discharged his burden. That necessarily means, that if the election petitioner fails to adduce such evidence which may persuade the court to draw a presumption in his favour the returned candidate will not be required to discharge his burden by adducing evidence in rebuttal. While on this point it will be also pertinent to mention that the election petitioner has establish the charge by proof beyond reasonable doubt and not merely by preponderance of probabilities as in civil action.

It is in view of the above settled position in law that these issues are required to be examined and decided.

27. As per the contents of the petition, respondent No. 1 is alleged to be guilty of the following corrupt/illegal practices :—

- (i) Bribery,
- (ii) Undue influence,
- (iii) Procuring assistance from persons in the service of the Government, and
- (iv) Electioneering after the close of the election campaign.
- (v) **Bribery:**

28. The sum and substance of the allegations on this count is that on 25-2-2003 one Uday Bhanu at the instance of respondent No. 1 was carrying country liquor to be distributed amongst the electorate in the vicinity of Nawahi and Batala 1 & 2 polling booths of the Constituency without any permit and FIR had been registered in this regard.

29. To prove these allegations, the petitioner in addition to his own statement as PW-8 relied on the statements of Inspector Ashish Sharma, SHO, Sarkaghat (PW-1) and Prem Singh (PW-13).

30. It is not in dispute that on 27-2-2003 pursuant to search warrant obtained from the concerned Court liquor was recovered and FIR No. 53 of 2003 under Section 62 of the Punjab Excise Act was registered at Police Station Sarkaghat as stated by PW-1. The petitioner in his statement has supported the recovery of the liquor. However, mere recovery of liquor from a car owned by Uday Bhanu will not involve respondent No. 1 in the commission of any corrupt practice. There is no averment in the petition that respondent No. 1 himself or through his agent had supplied liquor to any person to promote his prospects in the election. The petitioner (PW-8) has stated that respondent No. 1 during election campaign used and distributed liquor in large quantity. It is his admitted case that large number of people in Gopalpur Constituency take liquor. He further goes on to state that during elections as and when he saw the people raising Congress slogans, flags and indulging in drunken behaviour, he assumed that they were given liquor by respondent No. 1. He admits that he had not personally seen respondent No. 1 or his workers offering liquor to the villagers. In view of these admissions his version that respondent No. 1 used and distributed liquor in larger quantity based on his assumptions and presumption and not specifically pleaded in the petition is inconsistent and unreliable.

31. PW-12 has stated that Uday Bhanu was canvassing in favour of respondent No. 1. He used to paste posters of respondent No. 1 and to serve the people with liquor. There are, however, no allegations in the relevant para of the petition that Uday Bhanu used to paste the posters of respondent No. 1 and serve the people with liquor. The statement thus, being beyond the pleadings is not acceptable. It is more so because this witness admittedly is Senior Vice President of Gopalpur Mandal of Bhartiya Janta Party and the petitioner had contested the election as a Candidate of BJP. It is admitted by this witness that at the relevant time he met the petitioner but he never informed him of serving liquor to the electorate by Uday Bhanu and/or with the consent of and on behalf of respondent No. 1. The version of this witness, therefore, is unreliable and appears to be an after thought.

32. As already stated herein above, the matter regarding recovery of liquor from Uday Bhanu was investigated into by the police and the final outcome as stated by PW-1 is that the liquor in question had nothing to do with the election or any one other than Uday Bhanu, the accused in the case. The petitioner has not led any other cogent and reliable evidence to that the liquor found in possession of Uday Bhanu was being transported by him with the consent of respondent No. 1 with a view to distribute it to the voters.

33. Respondent No. 1 (RW-1) in his statement has denied any work having been done for him by Uday Bhanu during elections and there is no suggestion to him in his cross-examination that he himself or Uday Bhanu or for that matter any of his agents ever offered/served liquor to the voters.

34. The petitioner has, thus, failed to prove the allegation that liquor was distributed to the voters by or on behalf of respondent No. 1 with his consent.

(II) Undue Influence:

35. Undue influence as a corrupt practice under the Election Law means any direct or indirect interference or attempt to interfere on the part of the candidate or his agent or any other person with the consent of the candidate or his election agent with the free exercise of any electoral right. The expression undue influence includes a threat to cause any kind of injury and inducement to a candidate, elector or a person in whom such candidate or elector may be interested. However, it is not necessary that there must be actual threat or physical compulsion but the method of threat or inducement must convey to the person concerned that the threat or inducement may result in injury to him or a person in whom he may be interested. Thus, some fear of injury as a result of non-compliance of what is desired by such threat or inducement is essential ingredient of undue influence.

36. In the case in hand, the precise allegations of this count are that the respondent No. 1 violated the rules and the law and illegally influenced the voters to vote for him in the elections The respondent No. 1 was using red light on his private vehicle during electioneering in almost the entire Constituency.....

37. The alleged act of use of red light on top of a vehicle by itself, in my view, does not constitute an inducement or threat to influence the discretion of an individual to act in an independent manner. Even if the red light is unauthorisedly used by the returned candidate during election it is not an act of 'inducement' or 'threat'. It may be an illegal act but is incapable of effect in the election result.

38. Even otherwise it is not established that respondent No. 1 used the red light on his vehicle and thereby influenced the voters to vote for him. To prove this allegation the petitioner (PW-8) in addition to his own statement relied on the statements of Gulab Singh (PW-9), Ranjit Singh (PW-10), Munshi Ram (PW-11) and Ajay Kumar Bhawani (PW-15). As per the evidence of PW-8, respondent No. 1 unauthorisedly used red light on his vehicle during election campaign giving the impression that he could do whatever he wanted. As per the contents of the petition, the petitioner had not himself seen respondent No. 1 using the red light as alleged, therefore he has no personal knowledge of alleged unauthorised use of red light by respondent No. 1. He has not stated on oath as to how he came to know about the alleged use of red light by respondent No. 1. Therefore no reliance can be laid on his evidence in this regard.

39. PW-9 has stated that he had seen respondent No. 1 using red light on his vehicle during election which created some sort of horror in the mind of the voters and Dilbar Singh is one of such person. Dilbar Singh has not been examined. PW-9 is admittedly a BJP worker and, therefore, an interested witness on whose testimony no implicit reliance can be laid.

40. PW-10 claims that he had seen respondent No. 1 travelling in a jeep having red light affixed to it which 'attracted' the voters more towards him. He so saw respondent No. 1 twice or thrice during day time when red light is not used. The witness could not give the date(s) when he had seen the respondent using red light as alleged and admittedly he did not inform any one about it. How the petitioner came to know that this witness had seen respondent No. 1 using red light remains unexplained rendering the version of this witness that of a procured witness and thus unreliable.

41. PW-11 also claims having seen respondent No. 1 using red light on his vehicle during electioneering which had some impact on the masses. However the witness had admittedly so seen respondent No. 1 during day time and did not see him asking any one to vote for him. He has not given the date and place of his having seen respondent No. 1 using the red light rendering his statement not confidence inspiring.

42. PW-15 claims to have made complaint Ext. PW-15-A about the alleged use of red light by respondent No. 1. His statement is based on information received and not on personal knowledge. He has stated that Ext. PW 15-A is the copy of complaint written by B. L. Palsara and signed by him and was delivered in the Office of the Returning Officer. The complaint Ext. PW 15-A does not disclose the name of any informant nor PW-15 has stated as to when and from whom he or B. L. Palsara received the information about use of red light on his vehicle by respondent No. 1. Said B. L. Palsara has not been examined. The non-disclosure of the informant(s) in this complaint or by PW-15 lends credence to the probability that the witness who stated on this count are procured and tutored and their evidence is thus unreliable.

43. The petitioner has not led any cogent evidence that complaint Ext. PW 15-A addressed to the Returning Officer was in fact delivered in the Office of the Returning Officer, as

alleged. On the contrary Niraj Kumar (PW-7) admittedly the concerned Returning Officer produced by the petitioner has denied receipt of any complaint from PW-15 during election. He has specifically denied receipt of any complaint from any one about the alleged use of red light by respondent No. 1 on his vehicle. He has further stated that he had not seen respondent No. 1 using red lights as alleged. Thus, the statement of this witness instead of lending any credence to the petitioners version, fully belies it.

44. Respondent No. 1 while appearing as his own witness has denied the use of red light by him as alleged by the petitioner.

45. As seen above the evidence led by the petitioner is not consistent, coherent and reliable, therefore, it is not proved that respondent No. 1 unauthorisely used red light on his vehicle and thereby induced or threatened the voters so as to enhance his prospects in the election.

(III) Procuring Assistance from Government Servants:

46. As per the allegations in the petition, respondent No. 1 sought assistance of and was assisted by Government servants in furtherance of his prospects in the election.

47. According to the contents of the petition X-En. Kuldeep Rao and Dr. Nanak Chand, both Gazetted Government servants and relatives of respondent No. 1, canvassed for him and influenced voters of polling booths Thona, Tikkar, Pingla and Khahn and Kashmir Singh (PW-12) witnessed them doing so. PW-12 in his examination-in-chief, however, does not support these allegations in entirety. He has stated that he saw the aforesaid two Government servants canvassing for respondent No. 1 at single and it is not stated by him in his examination-in-chief that he saw the aforesaid Government servants canvassing for respondent No. 1 at Thona, Tikkar and Khahn. In the cross examination he states that he saw them canvassing on 24-2-2003 at about 10-10.30 A. M. and informed the petitioner at about 11.30 in the night. Thus, he improved upon his examination-in-chief in his cross-examination stating that he had seen the aforesaid Government servants canvassing for respondent No. 1 at Thona, Tikkar and Gahar also before 24-2-2003. Evidently the witness has made material improvement in his cross-examination which instead of supporting the cause of the petitioner renders his version suspicious. Primarily there is no reason as to why the witness has not made full disclosure of alleged facts in his examination-in-chief. Secondly, he introduces the new version that he saw the aforesaid Government servants canvassing at Gahar whereas there is no allegation in the petition that the aforesaid Government servants canvassed for respondent No. 1 at Gahar at any point of time. He has clearly and unambiguously admitted in his cross-examination that aforesaid Government servants did not ask for vote for respondent No. 1 in my presence. If so, what type of canvassing by the aforesaid Government servants was done remains a mystery unfolded in the petition as well as in the statement of this witness, admittedly a BJP worker, rendering his evidence highly suspicious and unreliable. Whatever PW-8 states on this count is not based on personal knowledge but is admittedly based on suspicious and unreliable statement of PW-12, hence of no use and consequence. There is no other evidence of the petitioner to prove this version which is denied by respondent No. 1 in his evidence.

48. It is further case of the petitioner in the petition that Deputy Director (Education) Anita Rao, Lecturer, Surjit Rao and Joginder Singh, all Gazetted Government servants and relatives of respondent No. 1, in and around Gopalpur especially in the areas of Gopalpur. Badal and Mohin had influenced the voters and pressurised the employee voters. Jai Gopal was also requested by them to vote for respondent No. 1. The petitioner (PW-8) has stated that Anita Rao and Joginder Singh campaigned for respondent No. 1 in Gopalpur area. He does not specify the places nor states about campaigning by Surjit Singh alongwith the aforesaid Government servants. It is admitted case of the petitioner that no complaint was made against family members of respondent No. 1 (which all the aforesaid Government servants admittedly are) about the alleged campaigning for respondent No. 1 by them. The

petitioner does not claim that he had seen the said family members of respondent No. 1 campaigning/canvassing from him. He is admittedly not in a position to name any person except PW-12 who might have seen the said Government servants/family members of respondent No. 1 canvassing/campaigning for respondent No. 1. Said Jai Gopal who allegedly witnessed canvassing by Anita Rao, Joginder Singh and Surjit Rao, though cited as a witness by the petitioner and despite being present in the Court was not examined by the petitioner. Therefore, by his non-production an inference adverse to the petitioner can legitimately be drawn. As already concluded herein above, the statement of PW-13 is suspicious and unreliable. Thus, there is no cogent and reliable evidence on record to prove that respondent No. 1 sought assistance of his aforesaid family members/Gazetted Government servants to enhance his prospects in the election.

49. It is though established on record that the aforesaid members of the family of respondent No. 1 at the relevant time were not on duty. However, the evidence led by the petitioner himself in this regard proves that their absence from duty was either because of winter vacations or medical leave or intermittent casual or special casual leave. The mere fact that a Government servant during election was on leave will not necessarily lead to the conclusion that he was so far canvassing/campaigning for a candidate contesting election. Actual participation of the Government servant in canvassing campaigning with the consent of the candidate has to be proved which has not been done in this case.

50. It is also the case of the petitioner that so many other Government servants worked for respondent No. 1 in the election. As per the contents of the petition Ved Prakash influenced voters in Baldwara area and asked Dalip Thakur to vote for respondent No. 1. Lal Singh influenced employees of HPSEB. Ved Prakash, Lecturer, actually worked for respondent No. 1 in Smaila, Alsog, Nawahi, Bathehra and Chauki and asked Ramesh Thakur and Nishi Kant to vote of respondent No. 1. It is also averred in the petition that complaints in this regard were made to the concerned authorities.

51. It is not in dispute that PW-8 had himself not seen the said Government servants working in furtherance of the prospectus of respondent No. 1 in the elector. He claims to have come to know about it from his election agent. Therefore, his statement in this regard is not of much probative value. Out of the persons who were asked to vote for respondent No. 1 by the aforesaid Government servants, Ramesh Thakur (PW-14) only has been examined. He supports the version of the petitioner but being son of petitioner's sister, he is an interested witness and no implicit reliance can be laid on his evidence. The other named persons Dalip Singh and Nishi Kant though cited, summoned and present in the Court were not examined by the petitioner. From non-production of these two material witnesses an inference adverse to the case of the petitioner can readily and legitimately be drawn.

52. It is admitted case of the petitioner that his agent/partymen complained about participation of Government servants in canvassing for respondent No. 1 to Election Office, Sarkaghat, vide Ext. P-1 and to the Chief Electoral Commissioner, Himachal Pradesh, vide Ext. PW 6-A. According to the Returning Officer, Sarkaghat (PW-7) he did not receive any complaint from the petitioner's agents. A perusal of the contents of the petition and the evidence led by the petitioner reveals that the Government officials alleged to have participated in Congress election meetings vide R-3 are not mentioned either in the petition or in the evidence. Thus, complaint R-1 is not shown to have any merit and substance.

53. The original of Ext. PW-6/A was admittedly received in the office of the Chief Electoral Officer, Himachal Pradesh (PW-6). PW-6 has stated that the complaint was forwarded to the Public Works Department, State Electricity Board and Education Department and on inquiries made, the complaint was found false.

54. In view of the above, it can be safely concluded that the petitioner has failed to prove that respondent No. 1 sought assistance of Government servants who with his consent or consent of his agent, acted in furtherance of his prospects in the election.

(IV) Electioneering after close of election campaign :

55. It is alleged in the petition that respondent No. 1 violated law by electioneering after close of the campaign, on 25-2-2003, in villages Jamni and Ropri. These allegations are admittedly not based on personal knowledge of the petitioner. No witness in this regard is named in the petition nor produced at the trial. It is alleged that the aforesaid illegal act was complained against to the Sub-Divisional Magistrate concerned who sent a police party to the spot. The Sub-Divisional Magistrate (PW-7) has not stated about receipt of any such complaint nor the records of the police particularly report Daily Diary regarding despatching a police force to the spot, as alleged, has been produced in evidence. The allegation, therefore, remains unproved.

56. In view of the above conclusions, it is held that the petitioner has failed to prove Issue Nos. 5 and 6 and accordingly these issues are held against him.

Issue No. 7 Relief :

57. In view of the findings given on Issues No. 1 to 6 above, this Election Petition merits dismissal and is accordingly dismissed with costs of Rs. 10,000/-.

58. The Registrar General of this Court shall forthwith intimate the substance of the decision herein above to the Election Commission of India and the Speaker of the Himachal Pradesh Vidhan Sabha and also send an authenticated copy of the decision to the Election Commission of India in accordance with the provisions of Section 100 (3) of the Act.

August 17, 2004 (sd).
Seal.

Sd/-
(M. R. VERMA),
Judge.
High Court of H.P., Shimla.

आदेश से,
हस्ताक्षरित/-
(के० अजय कुमार)
सचिव,
भारत निर्वाचन आयोग ।

By order,
Sd/-
(K. AJAYA KUMAR),
Secretary.

